

accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Disclosure of tax return information is also authorized to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (o), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the preparer being reviewed. The preparer being reviewed shall maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel. Any person (including administrative and support personnel) receiving tax return information in connection with a quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(p) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* The provisions of section 7216(a) and § 301.7216-1 do not apply to any disclosure of tax return information permitted by this paragraph (p) made after December 28, 1990. In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased preparer's estate) in operating the business. Any person receiving tax return informa-

tion under the provisions of this paragraph (p) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

[T.D. 7310, 39 FR 11539, Mar. 29, 1974, as amended by T.D. 7676, 45 FR 11471, Feb. 21, 1980; T.D. 7780, 45 FR 49547, July 25, 1980; T.D. 7948, 49 FR 8602, Mar. 8, 1984; T.D. 8383, 56 FR 66996, Dec. 27, 1991; 57 FR 12, Jan 2, 1992; T.D. 8427, 57 FR 37085, Aug. 18, 1992]

**§ 301.7216-3 Disclosure or use only with formal consent of taxpayer.**

(a) *Written consent to use or disclosure—(1) Solicitation of other business.* (i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use the tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group within the meaning of section 1504. Thus, for example, the authorization would not apply if the other person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

(ii) For prohibition against solicitation of employment in matters related to the Internal Revenue Service, see 31 CFR 10.30 (Treasury Department Circular No. 230) and section 7 of Rev. Proc. 68-20, 1968-1 C.B. 812.

(2) *Permissible disclosures to third parties.* If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see § 301.7216-2 for certain permissible disclosures without formal written consent.

(3) *Disclosure or use of information in connection with another person's return.* A tax return preparer may disclose or use any tax return information, which was obtained from a first taxpayer, in preparing a tax return of a second taxpayer if the tax return preparer has obtained from the first taxpayer a written consent described in paragraph (b) of this section. See § 301.7216-2(b) for disclosure or use in certain cases without formal consent.

(b) *Form of consent.* A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a) (1), (2) or (3) of this section and shall contain—

(1) The name of the tax return preparer,

(2) The name of the taxpayer,

(3) The purpose for which the consent is being furnished.

(4) The date on which such consent is signed,

(5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and

(6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph (b).

(c) *Illustrations.* The application of this section may be illustrated by the following examples:

*Example 1.* In order to stimulate the making of loans, a bank advertises that it is in the business of preparing tax returns. A tax-

payer goes to the bank to have his tax return prepared. After the return has been completed by the bank, the employee of the bank who obtained the tax return information from the taxpayer explains that the taxpayer owes an additional \$400 in taxes and that the bank's loan department may be able to offer the taxpayer a loan to pay the tax due. If the taxpayer decides to accept the opportunity offered to apply for a loan, the bank must first have the taxpayer execute a written consent described in paragraph (b) of this section for the bank to use any of such information which is required in determining whether to make the tax loan.

*Example 2.* An individual who sells life insurance and shares in a mutual fund is also in the business of preparing tax returns. A taxpayer who has gone to the individual to have his tax return prepared is requested, at the time he picks up his completed tax return, to give his consent to the individual's use of his tax return information in connection with such individual's solicitation of the taxpayer's purchasing a life insurance policy and shares in the mutual fund. Before the individual may use such tax return information as a basis for soliciting such additional business from the taxpayer, the taxpayer must execute separate written consents under paragraph (b) of this section, one authorizing the use of such information as a basis for soliciting the sale of the mutual fund shares and a second authorizing the use of such information as a basis for soliciting the sale of the life insurance.

*Example 3.* The facts are the same as in example 2 except that the individual does not sell life insurance but does sell shares in several mutual funds. If the request is for the purpose of using the tax return information as a basis for soliciting the sale at one time of shares in mutual funds A and B, only one written consent under paragraph (b) of this section is required of the taxpayer. If, however, the request is for the purpose of using the tax return information as a basis for soliciting the sale of shares in fund A at one time, and the sale of shares in fund B at a later time, two written consents under such paragraph are required of the taxpayer.

[T.D. 7310, 39 FR 11540, Mar. 29, 1974]

#### PENALTIES APPLICABLE TO CERTAIN TAXES

#### § 301.7231-1 Failure to obtain license for collection of foreign items.

For provisions relating to the obtaining of a license for the collection of foreign items, see section 7001 and § 301.7001-1.